

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 6736
BILL NUMBER: SB 223

NOTE PREPARED: Apr 6, 2009
BILL AMENDED: Apr 6, 2009

SUBJECT: Prosecution Costs, Inmate Litigation, and Trafficking with Inmates.

FIRST AUTHOR: Sen. Arnold
FIRST SPONSOR: Rep. Tincher

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) The bill does the following.

State Costs for Prosecution: The bill requires the state to pay all costs of trial in a prosecution: (1) for any offense committed at a state correctional facility; and (2) in the county in which the correctional facility is located. (Current law requires the state to pay all costs of trial only for an offense committed by an inmate of a state correctional facility in the county in which the correctional facility is located.)

Offender Civil Actions: It provides that an offender who has filed at least three civil actions that have been dismissed as frivolous may not file a new complaint or petition as an indigent person unless the offender is in immediate danger of serious bodily injury.

Trafficking with an Inmate: The bill makes trafficking with an inmate (which is, without enhancement, a Class A misdemeanor) a Class C felony if the item trafficked is a cellular telephone. It makes it a Class A misdemeanor if a person possesses or carries into a penal facility or a juvenile facility a controlled substance or a deadly weapon.

Effective Date: July 1, 2009.

Explanation of State Expenditures: (Revised) *Summary-* The bill could increase costs for the state to pay for the costs of a trial in a prosecution for offenses committed in a state correctional facility. State costs for frivolous lawsuits are expected to be minimal. Additionally, the costs of incarceration and fine revenue could increase for both state and local government by increasing the penalty for trafficking a cell phone with an inmate and by adding to the elements of this misdemeanor offense.

(Revised) *State Costs for Prosecution*: The bill would increase the costs to the state for prosecution of offenses occurring in state correctional facilities by increasing the pool of offenders for whom the state would pay court costs including court fees and sheriff costs to transport and house the prisoner. Currently, the state pays these costs for inmates who commit crimes in state correctional facilities and who have insufficient resources. Under the bill, all visitors, staff, and nonindigent inmates would have court costs paid. Additionally, the bill adds to the prohibited items by including cell phones in the trafficking with an inmate offense, which will increase the potential pool of offenders as well.

(Revised) *Offender Civil Actions*: This provision is expected to have a minimal effect on court expenditures. The bill would allow more offenders to file claims against the Department of Correction (DOC), but the added number would not likely be significant.

Unless plaintiffs are permitted to file "*in forma pauperis*", they must pay a filing fee at either the trial or appeal level and submit any court documents in a specific font style and size that could only be produced on a computer printer.

Under state court rules, parties who are permitted to proceed *in forma pauperis* are not required to prepay filing fees in actions at either the trial court or appellate level. They may also file legibly handwritten or typewritten briefs and other papers. (*Indiana Rules of Appellate Procedure*)

Trafficking with an Inmate: State expenditures could increase if an offender is incarcerated in a state prison rather than in a local jail. A Class C felony is punishable by a prison term ranging between 2 and 8 years. The period of incarceration will depend upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$20,287 in FY 2008. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost per offender for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily. The estimated average cost of housing a juvenile in a state juvenile facility was \$69,223. The average length of stay in DOC facilities for all Class C felony offenders is approximately two years.

(Revised) *Background– Offender Civil Actions*: Offenders who are affected by this bill include persons committed to the DOC or incarcerated in a jail. (IC 34-6-2-89)

The Office of the Attorney General maintains a file on its website that records the number of offenders who have filed frivolous lawsuits. As of November 6, 2008, 59 offenders were reported to have filed one or more lawsuits that a court has determined to be frivolous.

Offenders Identified by DOC As Frivolous Litigators	
Number of Frivolous Lawsuits	Number of Offenders
One	45
Two	7
Three	3
Four	2
Ten	1
21	<u>1</u>
Total Offenders	59
Source: Office of the Attorney General	

The Office of the Attorney General reports that in CY 2007, the state of Indiana paid out \$6,918.80 to 51 offenders. Payments ranged from a low of \$3.90 to a high of \$1,500. The average payment was \$135.

Trafficking with an Inmate and State Costs for Prosecution: Currently, it is a Class C felony to deliver or carry in a controlled substance or a deadly weapon to an adult or juvenile correctional facility. In 2007, there were five offenders committed to a state correctional facility for felony trafficking with an inmate.

Explanation of State Revenues: (Revised) *Trafficking with an Inmate - Felony Offense:* More revenue to the Common School Fund could be collected if a larger criminal fine is assessed by the sentencing court.

(Revised) *Trafficking with an Inmate - Misdemeanor Offense:* There are no data available to indicate if more offenders will be convicted of trafficking with an inmate if additional elements are added to the crime. If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund.

(Revised) *Penalty - Felony and Misdemeanor Offenses:* The maximum fine for a Class A misdemeanor is \$5,000, while the maximum fine for a Class C felony is \$10,000.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: (Revised) *State Costs for Prosecution:* The bill would reduce local costs for certain trials and sheriff costs for transporting and housing offenders who commit crimes in state correctional facilities.

Penalty - Felony and Misdemeanor Offenses: If an offender is sentenced to state prison rather than to a county jail, the costs to the county may be reduced. The maximum term of imprisonment for a Class A

misdeemeanor is up to one year. The average daily cost to incarcerate a prisoner in a county jail is roughly \$44.

Explanation of Local Revenues: (Revised) *Penalty - Felony and Misdemeanor Offenses:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: DOC.

Local Agencies Affected: Trial courts; local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association; Office of the Attorney General <<http://atgindsha01.atg.in.gov/legal/litigation/litscreen/>> Appellate Rule 40 Motion to Proceed In Forma Pauperis. <<http://www.in.gov/judiciary/rules/appellate/#r40>> Office of the Attorney General – Annual Tort Report Detail, CY 2007.

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